

1 Dan R. Waite (Nev. Bar # 4078)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
 2 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169
 3 Tel: (702) 949-8200
 Fax: (702) 949-8398
 4 Email: dwaite@lrrc.com

5 Richard Zack (*Admitted Pro Hac Vice*)
TROUTMAN PEPPER HAMILTON SANDERS LLP
 6 3000 Two Logan Square
 7 Eighteenth and Arch Streets
 Philadelphia, Pennsylvania 19103
 8 Tele: 215-981-4084
Attorneys for Defendants Intercept Corporation,
 9 *Bryan Smith, Craig Dresser, and Connie Mosier*

10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 THOMAS W. MCNAMARA, as the Court-
 Appointed Monitor for AMG Capital
 13 Management, LLC; BA Services LLC; Black
 Creek Capital Corporation; Broadmoor Capital
 14 Partners, LLC; Park 269, LLC; C5 Capital
 15 LLC; DF Services Corp.; DFTW Consolidated
 [UC] LLC; Impact BP LLC; Level 5 Apparel
 16 LLC; Level 5 Capital Partners LLC; Level 5
 Eyewear LLC; Level 5 Motorsports, LLC;
 17 Level 5 Scientific LLC; NM Service Corp.
 (f/k/a/ National Money Service); PSB Services
 18 LLC; Real Estate Capital LLC (f/k/a/ Rehab
 Capital I, LLC); Sentient Technologies; ST
 19 Capital LLC; Westfund LLC; Eclipse
 20 Renewables Holdings LLC; Scott Tucker
 Declaration of Trust, dated February 20, 2015;
 21 West Race Cars, LLC; and Level 5
 Management LLC; and their successors,
 22 assigns, affiliates, and subsidiaries,

23 Plaintiffs,

24 v.

25 INTERCEPT CORPORATION; BRYAN
 SMITH; CRAIG DRESSER; CONNIE
 26 MOSIER; DOES I-X; and ROE
 CORPORATIONS I-X,

27 Defendants.
 28

Case No. 2:18-cv-02281-GMN-VCF

**STIPULATION AND (PROPOSED)
 ORDER TO STAY PROCEEDINGS**

1 Plaintiff Thomas W. McNamara (“Monitor”), through his counsel, and Defendants
 2 Intercept Corporation, Bryan Smith, Craig Dresser, and Connie Mosier (“Defendants”), through
 3 their counsel (collectively the “Parties”), respectfully submit this Stipulation and (Proposed)
 4 Order to Stay Proceedings (“Stipulation”).

5 **The Monitor’s Position**

6 The Monitor believes the case against Defendants is meritorious and should be allowed to
 7 proceed. Both the Court’s order in the related case of *Thomas W. McNamara v. Linda Hallinan,*
 8 *et al.* (“*McNamara v. L. Hallinan*”), Case No. 2:17-cv-02967-GMN-BNW (D. Nev.), and the
 9 Court’s order in this case, denying in part and granting in part Defendants’ motion to dismiss (in
 10 which the Court “conclude[d] that McNamara has the authority to bring his claims,” including
 11 claims to recover fees paid to Defendants, see ECF No. 45 at 7), recognize the Monitor’s
 12 authority to pursue the claims at issue here against Defendants.

13 The Monitor acknowledges, however, that the Court has stayed four related actions that he
 14 has brought due to the United States Supreme Court’s review of the Court’s decisions in *Federal*
 15 *Trade Commission v. AMG Services, Inc., et al.*, Case No. 2:12-cv-00536-GMN-VCF (D. Nev.)
 16 — see, *Thomas W. McNamara v. Charles Hallinan, et al.*, Case No. 2:17-cv-02966-GMN-NJK,
 17 at ECF No. 154 (D. Nev. Aug. 11, 2020), *Thomas W. McNamara v. Stealth Power, LLC, Case*
 18 *No. 2:18-cv-01813-GMN-NJK*, at ECF No. 60 (D. Nev. Sept. 3, 2020), *McNamara v. L. Hallinan,*
 19 *at ECF No. 156 (D. Nev. Sept. 14, 2020), and Thomas W. McNamara v. Gary Patten, et al.*
 20 (“*McNamara v. Patten*”), Case No. 2:17-cv-02968-GMN-NJK, at ECF No. 101 (Sept. 14, 2020).

21 Notwithstanding these orders, the Monitor believes that it would be beneficial to proceed
 22 with discovery. This is because of the possibility of witnesses’ memories fading and documents
 23 being lost or destroyed during a stay. When granting the motion to stay in *McNamara v. Patten*,
 24 the Court cited the parties’ completion of fact discovery as a reason that the stay would not result
 25 in prejudice to the Monitor. *See id.* at ECF No. 101 at 2. Here, the parties are in the midst of fact
 26 discovery as to Count III (aiding and abetting breach of fiduciary duty) only – neither side has yet
 27 deposed a witness, and the Monitor has issued several discovery requests to Defendants that are
 28 still outstanding.

1 Nonetheless, the Monitor recognizes the issues presented to the Supreme Court on appeal
2 directly affect the scope of the authorization provided to the Monitor in the underlying case (the
3 “Monitor Order.”) Those issues apply equally to each of the cases brought by the Monitor, and
4 consequently, the Monitor understands that the Court is likely to ultimately stay the instant case,
5 too. As the Monitor has not brought this case on a contingency fee basis (unlike a number of the
6 other actions that he has brought pursuant to the Monitor Order), proceeding with discovery here
7 will result in direct costs to the Monitorship Estate. Recognizing that the likely end result is a
8 stay, the Monitor has deemed it to be in the best interests of the Monitorship Estate to stipulate to
9 a stay of this action.

10 **Defendants’ Position**

11 Defendants do not believe this case is meritorious. While the Court previously found the
12 Monitor had authority generally to initiate this action, the Court dismissed the majority of the
13 claims set forth in the Monitor’s original complaint for lack of standing and failure to sufficiently
14 plead claims against the individual Defendants (ECF No. 45 at 17-22). The Monitor’s amended
15 complaint, which brings the same claims that were previously found to be lacking, should be
16 dismissed in its entirety for the reasons set forth in Defendants’ pending motion to dismiss (ECF
17 No. 54).

18 Defendants also disagree that proceeding with discovery would be beneficial under the
19 circumstances. The Monitor already has in his possession a vast amount of records and
20 information, including Defendant Intercept’s prior productions in response to the FTC’s 2012
21 subpoena and the Monitor’s 2018 subpoena in the *AMG Services* matter, and the possibility of
22 memories fading is not an issue given that many of the events in question were already a decade
23 old when the Monitor filed his original complaint against Defendants.

24 Defendants do agree with the Monitor, however, that a stay of this action is appropriate
25 pending resolution of *AMG Capital Management, LLC v. Federal Trade Commission*, No. 19-
26 508, a case which could, as this Court has explained in the *Hallinan*, *Stealth Power*, and *Patten*
27 cases, directly affect the Monitor’s scope of authority and, as a result, his ability to proceed in this
28 action.

1 Accordingly, **IT IS HEREBY STIPULATED AND AGREED**, by and between the
2 undersigned counsel for the Parties, as follows:

3 1. The case shall be stayed pending the United States Supreme Court's decision in
4 *AMG Capital Management, LLC v. Federal Trade Commission*, No. 19-508.

5 2. The Monitor and Defendants shall jointly file a status report every three months
6 beginning on November 2, 2020, addressing the status of *AMG Capital Management, LLC v.*
7 *Federal Trade Commission*, No. 19-508.

8 3. Any motions currently pending before the Court in this matter will be addressed by
9 the Court once the stay is lifted.

10 4. Pending motions do not need to be refiled with the Court.

11 5. Upon the United States Supreme Court's decision, the Parties shall jointly petition
12 the Court to lift the stay within seven (7) days of the decision.

13 6. If and after the stay is lifted, the Parties will be given a reasonable amount of time
14 to complete fact discovery.

15 7. The Parties understand their obligations to preserve evidence while this matter is
16 stayed.

17 DATED this 25th day of September, 2020.
18
19
20
21
22
23
24
25
26
27
28

MCNAMARA SMITH LLP

By: /s/ Andrew M. Greene

Edward Chang (NV 11783)
echang@mcnamarallp.com
Cornelia J. B. Gordon
(Pro Hac Vice)
cgordon@mcnamarallp.com
Andrew M. Greene
(Pro Hac Vice)
agreene@mcnamarallp.com
MCNAMARA SMITH LLP
655 West Broadway, Suite 1680
San Diego, California 92101
Tel: 619-269-0400
Fax: 619-269-0401

Michael F. Lynch (NV 8555)
Michael@LynchLawPractice.com
LYNCH LAW PRACTICE, PLLC
3613 S. Eastern Ave.
Las Vegas, Nevada 89169
Tel: 702-684-6000
Fax: 702-543-3279

*Attorneys for Court-Appointed
Monitor*

IT IS SO ORDERED.

Dated this 2 day of October, 2020.


LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Dan R. Waite

Dan R. Waite (Nev. Bar # 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: (702) 949-8200
Fax: (702) 949-8398
dwaite@lrrc.com

Richard Zack (*Admitted Pro Hac Vice*)
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, Pennsylvania 19103
Tel: 215-981-4084

*Attorneys for Defendants Intercept Corporation,
Bryan Smith, Craig Dresser, and Connie Mosier*



Gloria M. Navarro, District Judge
United States District Court

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Lewis Roca
ROTHGERBER CHRISTIE

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5, I hereby certify that service of the foregoing “*Stipulation (And Proposed Order) To Stay the Proceedings*” was made through the United State District Court’s CM/ECF system on counsel of record.

DATED this 25th day of September, 2020.

/s/ Luz Horvath

An Employee of Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Lewis Roca
ROTHGERBER CHRISTIE